

# HOUSE . . . . . No. 2805

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Peter J. Koutoujian**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

### AN ACT RELATIVE TO CERTAIN TAX EXEMPTIONS .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Peter J. Koutoujian	10th Middlesex
Charles A. Murphy	21st Middlesex
Michael J. Rodrigues	8th Bristol
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Bruce E. Tarr	First Essex and Middlesex

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO CERTAIN TAX EXEMPTIONS .

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 63 of the General Laws is hereby amended by deleting section 42B thereof and substituting therefor the following section: --

Section 42B. (a) Every business corporation subject to taxation under section 39 that has a usual place of business in the commonwealth, and is engaged in manufacturing in the commonwealth, or engaged in the commonwealth in research and development shall, for the purposes of this chapter, be considered to be a manufacturing corporation or a research and development corporation. Every manufacturing corporation shall be taxed in the same manner and shall have the same duties under this chapter and chapter 62C as other business corporations subject to taxation under section 39, except insofar as the determination of the excise under this chapter may be affected by reason of the exemption from local taxation of the machinery of a manufacturing corporation.

(b) A research and development corporation for the purposes of this section is a business corporation subject to taxation under section 39 whose principal activity herein is research and development and which, during the taxable year, derives more than 2/3 of its receipts attributable to the commonwealth from the activity. Receipts from research and development shall include receipts from the provision of research and development services and from royalties or fees derived from the licensing of patents, know-how or other technology developed from research and development. For purposes of this section and of section 6 of chapter 64H, research and development is experimental or laboratory activity having as its ultimate goal the development of new products, the improvement of existing products, the development of new uses for existing products, and the development or improvement of methods for producing products, and does not include testing or inspection for quality control purposes, efficiency surveys, management studies, consumer surveys or other market research, advertising or promotional activities, or research in connection with literacy, historical or similar projects. Nothing in this section shall be construed to provide for an exemption from local taxation of the machinery of a corporation deemed to be a research and development corporation which is not deemed to be a manufacturing corporation.

(c) For purposes of this section and section 38, the development and sale of standardized computer software shall be considered a manufacturing activity, without regard to the manner of delivery of the software to the customer.

SECTION 2. Section 6 of Chapter 64H of the General Laws is hereby amended by deleting subsection (r) thereof and substituting therefor the following subsection: --

(r) Sales of materials, tools and fuel, or any substitute therefor, which become an ingredient or component part of tangible personal property to be sold or which are consumed and used directly and exclusively in agricultural production; in commercial fishing; in an industrial plant in the actual manufacture of tangible personal property to be sold, including the publishing of a newspaper; in the operation of commercial radio broadcasting or television transmission; in the furnishing of power to an industrial manufacturing plant; in the furnishing of gas, water, steam or electricity when delivered to consumers through mains, lines or pipes; in the production of animals for research, testing, or other purposes relating to the promotion or maintenance of the health, safety or well being of human beings or animals; or in research and development as defined in section 42B of chapter 63. However, the exemption in this paragraph so far as it applies to sales of electricity, gas and steam consumed and used directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold shall be limited to the extent allowed in paragraph (i). For the purpose of this paragraph, the raising of poultry and livestock shall be construed to be included in the term "agricultural production"; any material, tool or fuel shall be construed to be consumed and used only if its normal useful life is less than one year or if its cost is allowable as an ordinary and necessary business expense for federal income tax purposes or if it is nuclear fuel or a nuclear fuel assembly; and the term "industrial plant" shall mean a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business.

SECTION 3. Section 6 of Chapter 64H of the General Laws is hereby further amended by deleting subsection (s) thereof and substituting therefor the following subsection: --

(s) Sales of machinery, or replacement parts thereof, used directly and exclusively in agricultural production; in commercial fishing; in an industrial plant in the actual manufacture of tangible personal property to be sold, including the publishing of a newspaper; in the operation of commercial radio broadcasting or television transmission; in the furnishing of power to an industrial manufacturing plant; in the furnishing of gas, water, steam or electricity when delivered to consumers through mains, lines or pipes; in the production of animals for research, testing, or other purposes relating to the promotion or maintenance of the health, safety or well being of human beings or animals; or in research and development as defined in Section 42B of chapter 63. For the purpose of this paragraph, the raising of poultry and livestock shall be construed to be included in the term "agricultural production"; the term "industrial plant" shall mean a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business; and machinery shall be deemed to be used directly and exclusively in the actual manufacture, conversion or processing of tangible personal property to be sold only where such machinery is used solely during a manufacturing, conversion or processing operation to effect a direct and immediate physical change upon the tangible personal property to be sold; to guide or measure a direct and immediate physical change upon such property where such function is an integral and essential part of tuning, verifying or aligning

the component parts of such property; or to test or measure such property where such function is an integral part of the production flow or function; used solely to store, transport, convey or handle such property during the manufacturing, converting, or processing operations heretofore specified; or used solely to place such property in the container, package or wrapping in which such property is normally sold to the ultimate consumer thereof. Machinery used directly and exclusively in the actual manufacture, conversion or processing of any tangible personal property which is not to be sold and which would be exempt under paragraph (r) or this paragraph if purchased from a vendor thereof or machinery used during any manufacturing, converting or processing, conveying or packaging operation or function or for any other purpose, except as heretofore specified, shall not be exempt under this paragraph even though such operation, function or purpose is an integral or essential part of a continuous production flow or manufacturing process. Where a portion of a group of portable or mobile machinery is used directly and exclusively in the actual manufacture, conversion or processing of tangible personal property to be sold, as heretofore defined, the number represented by such portion, if otherwise qualifying, shall be exempt under this paragraph even though the machinery in said group is used interchangeably and not otherwise identifiable as to use.

SECTION 4. This act shall take effect with respect to sales made on or after July 1, 2009.